Supreme Court of the United States

..... Term .....

No. .....

PAMPANGA SUGAR MILLS,
Petitioner,

VERSUS

WENCESLAO TRINIDAD,
as Collector of Internal Revenue
of the Philippine Islands,
Respondent.

BRIEF FOR PETITIONER

This is a petition for a writ of certiorari under the provisions of Sec. 7 of the Act of Congress of February 13, 1925 (43 Stat. at L. 940, Fed. Stat. Anno. Supp. 1925, p. 90) giving jurisdiction to this Honorable Court to examine by certiorari the final judgment and decree of the Supreme Court of the Philippine Islands in all cases in which the Constitution or any statute, treaty, title or privilege of the United States is involved, or in causes in which the value in

controversy exceeds $25,000.00. Under section 8 of the Act, application for the writ must be made within six months after the entry of the judgment or decree sought to be reviewed. The judgment of the Supreme Court of the Philippine Islands involved in this petition was entered on February 13, 1928 (Record, p. 72.) It is urged that a writ of certiorari should issue in this case for the reason, among others, that the value in controversy involved in this cause amounts to more than $25,000.00, and for the further reason that the decision of the Supreme Court of the Philippine Islands was made possible only by the concurring vote of one of the justices of said Court who expressly announced that his vote was given in order that there may be a decision from which an appeal may be taken to this Court and that the issues involved in this case may be finally determined upon the merits thereof.

OPINION OF THE COURT BELOW

The opinion of Mr. Justice Ostrand of the court below was concurred in by Justices Street, Malcolm and Romualdez. Mr. Justice Johnson concurred *pro hac vice* in a separate opinion wherein, as stated above, he expressly announced that while he agreed with the theory of the petitioner herein, still in view of the fact that for a number of years there existed

a deadlock among the members of the Supreme Court, he did vote for the confirmance of the decision of the lower court in order that there may be a decision from which the defeated party may appeal to the Supreme Court of the United States and obtain an official decision upon the merits. Mr. Justice Villamor dissented in a separate opinion and Chief Justice Avanceña and Mr. Justice Johns joined in filing another dissenting opinion.

Under section 138 of the Administrative Code of 1917, the vote of five members in the Supreme Court is necessary in order that there may be a decision on any case pending before it in which the amount involved is in excess of ₱10,000.00. Due to the inhibition by one of the justices of the Supreme Court from taking part in the disposition of this case, only eight justices took part in the decision and for three years four justices were of the opinion that the decision of the court should be confirmed, while the other four justices were of the opinion that the decision should be reversed. On account of the fact that the deadlock continued after repeated hearings granted to the parties, Mr. Justice Johnson as already stated concurred *pro hac vice* with those voting for the confirmation of the lower court's decision, but in his concurring opinion the expressly announced his view that the said decision should be reversed.

The majority opinion, in reaching the conclusion that petitioner is liable for the payment of the tax provided in section 1459 of the Administrative Code, held:

1. That the raw centrifugal sugar upon which the tax is imposed was manufactured and sold by the petitioner, and therefore the said petitioner is a manufacturer selling articles of its own production, and as such must be considered a merchant under section 1459 of Act No. 2711 (the Administrative Code of 1917).

2. That petitioner does not come within the exemption provided in section 1460 of the same Act, because while it is the producer of the raw centrifugal sugar, the finished product, it is not the producer of the agricultural product, the sugar cane.

3. That in the application of the statute, it is not necessary to inquire into the legal position of the petitioner in the manufacture of the raw centrifugal sugar which is being taxed, the sole criterion being the fact that it produced said sugar by its own manufacture and it thereafter sold the same.

Mr. Justice Johnson, in his concurring opinion, said that while he voted with the majority, he did *not* agree with their conclusion on the point of law involved. He held:

1. That the extraction of the sugar from the sugar cane does not involve a process of manufacture.

2. That petitioner is a mere employee of the sugar cane growers, being paid for its service in milling their cane with a fixed share in the sugar, in lieu of cash.

3. That no tax could be collected if the services of petitioner were paid in cash, therefore such tax cannot be collected just because payment is made in specie.

Mr. Justice Villamor, dissented upon the same grounds set forth in his dissenting opinion in the case of Central Azucarera de Bais vs. Trinidad, 46 Phil. 501.

Mr. Justice Johns, with whom Chief Justice Avanceña concurred, filed a separate dissenting opinion in which he held:

1. That in view of the stipulation of facts in this case, petitioner cannot in any way be considered as having in effect purchased the sugar cane from the sugar cane growers, and, therefore, the doctrine in the case entitled "Central Azucarera de Bais vs. Wenceslao Trinidad," 46 Phil. 492, is not applicable to the instant case.

2. That petitioner never obtained legal title to the sugar cane or to the centrifugal sugar while in

process of manufacture, and therefore it could not be said that the sugar is of its own production.

3. That all of the errors assigned by plaintiff-appellant in its brief were well taken and the decision of the lower Court should be reversed.

THE FACTS

Briefly stated, the facts are:

Petitioner owns and operates a sugar mill at Del Carmen, Province of Pampanga, Philippine Islands. In the operation of this sugar mill it mills sugar cane grown by sugar cane growers on lands other than those belonging to it, and as compensation for its services in converting such sugar cane into raw centrifugal sugar, it receives from the owners of the sugar cane 50% of the raw centrifugal sugar resulting from the milling thereof. From July 1, 1920 to June 30, 1922, both dates inclusive, petitioner received from sugar cane growers in the manner aforementioned raw centrifugal sugar which upon being sold resulted in a total sales value of ₱6,091,142.00.

The respondent herein, claiming authority under section 1459 of Act No. 2711 of the Philippine Legislature, commonly known as the Administrative Code of 1917 (and which for convenience will hereafter be referred to as such) levied a tax of one

per centum (1%) on the total sales value of said sugar, and petitioner, in order to avoid the penalties provided by law, involuntarily and under protest paid said tax, amounting in all to ₱60,911.42. Written protest was filed with respondent, alleging that the collection of said tax is illegal and that petitioner is exempted from the payment of said tax by reason of section 1460 of the same Act.

THE STATUTE

For convenience, we are again quoting the pertinent portions of sections 1459 and 1460 of the Administrative Code of 1917, to wit:

> "SEC. 1459. *Percentage tax on merchants' sales.*—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.
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> *'Merchant', as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially pro-*

vided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

"SEC. 1460. *Sales not subject to merchants' tax.*— In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Things subject to a specific tax.

"(b) *Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not.*" (Italics ours.)

THE QUESTIONS OF LAW

In submitting this case to this Honorable Court, petitioner relies on the following propositions:

1. The decision of the Supreme Court of the Philippine Islands in the instant case is not conclusive upon this Honorable Court, notwithstanding the fact that it involves mainly the interpretation and application of a local statute.

2. Petitioner herein is not a manufacturer in the sense of constituting it a merchant under the provisions of section 1459 of the Administrative Code of 1917.

3. Petitioner is included within the exemptions provided in section 1460 of the same Code.

ARGUMENT

I

The decision of the Supreme Court of the Philippine Islands in the instant case is not conclusive upon this Honorable Court, notwithstanding the fact that it involves mainly the interpretation and application of a local statute.

Section 138 of the Administrative Code of 1917 provides that when there is no vacancy in the Supreme Court at least five justices must concur in the pronouncement of a judgment in a case involving more than ₱10,000.00. In the instant case the amount involved is ₱60,911.42. There is no vacancy in the Supreme Court. Only four justices concurred in the majority opinion, and the fifth justice who voted with the majority filed a separate concurring opinion in which he expressly states that "in order to obtain a decision, so that the defeated party may appeal to the Supreme Court of the United States and obtain an official decision upon the merits," he has decided "to concur for that purpose *pro hac vice*." His concurring opinion further shows that he dissents entirely from the fundamental doctrines underlying the opinion of the majority. (See concurring opinion of Mr. Justice Johnson. Record pp. 62-64.)

While ordinarily a final judgment by the local Supreme Court on the interpretation of a local tax statute would not be disturbed by this Honorable Court, we submit that the special circumstances surrounding the rendition of the judgment in this case, would warrant a full review of the decision of the Supreme Court of the Philippine Islands and the rendering of a decision by this Honorable Court on the merits of this case. Otherwise, petitioner would be greatly prejudiced by a final judgment lacking in the essential safeguards provided by law.

II

Petitioner is not a manufacturer in the sense of constituting it a merchant under the provision of section 1459 of the Administrative Code of 1917.

Previous Judicial and Administrative Rulings

The manufacture of raw centrifugal sugar in the Philippine Islands is of comparatively recent beginnings. The first case involving the application of the Internal Revenue laws to owners and operators of sugar mills was decided by the local Supreme Court on September 26, 1922. (La Carlota Sugar Central v. Wenceslao Trinidad, 43, Phil. 816.) The facts in that case, as stated in the decision, were as follows:

"That the plaintiff is a corporation organized and existing under the laws of the Philippine Islands; that the defendant is the Internal Revenue Collector of the Philippine Islands; that the plaintiff is the owner of a sugar mill located at La Carlota, Province of Occidental Negros, Philippine Islands, established for the purpose of producing raw centrifugal sugar from sugar cane delivered to it by sugar cane growers; that all the sugar produced at said mill is under an agreement with the growers of sugar cane, by virtue of which agreement the plaintiff receives for its work 45 per centum of the sugar produced and the owner of the cane receives 55 per centum of the same; that during the first and second quarters of the year 1921 the paintiff shipped from the Philippine Islands, for sale abroad, raw centrifugal sugar as its share of the sugar produced in said mill, of the value of ₱1,963,825; and that the defendant as Collector of Internal Revenue, claiming to be authorized so to do by section 1462 of Act No. 2711, treated the plaintiff's share of the raw sugar so produced, as gross receipts subject to taxation under the provisions of said section, and levied, assessed, and collected, by way of percentage tax from the plaintiff, under protest, the sum of ₱19,638.25."

The local Supreme Court, by a unanimous decision, held, with respect to the relation between the sugar central and the sugar cane growers,—

"Two persons enter into a contract, by virtue of which the first furnishes the material and the second, the labor, upon condition that they divide the proceeds of the finished product in proportion to the

value of the material and labor. Are such persons contractors, falling under the provisions of said section? The answer must be in the negative. They are partners and are, in no sense, contractors under the meaning of that word as used in said section.

"Is not the agreement between the plaintiff herein and the growers of the sugar cane more analogous to that of a partnership than to that of a contractor and a contractee? One furnishes the material for the sugar; the other furnishes the labor and the means necessary to produce the sugar. They agree to divide the product, evidently in proportion to the value of the raw material with that of the finished product. Is not the relation of the plaintiff with the growers of the sugar cane more nearly that of a partnership or "de una sociedad de cuentas en participación?" If that is so, the plaintiff cannot be regarded as a contractor either in the general or special signification of that term. While it may be true that the plaintiff used its own means and methods for the production of sugar, without submitting itself to the control as to petty details by the growers of the sugar cane, yet by virtue of the very terms of the agreement it cannot be regarded as a contractor for the reason that, by virtue of the terms of the agreement, both the plaintiff and the growers of the sugar cane are joint owners in the proportion agreed upon of the finished product. While perhaps they cannot be technically regarded as partners, their relation is more like that of a partnership than of contractor and contractee."

At the time the La Carlota case was decided, Act 3082 of the Philippine Legislature amending section 1462 of the Administrative Code of 1917, had not

been passed. Sugar centrals were not included specifically among those business to be taxed under the original Administrative Code provision. In spite of this, the Collector of Internal Revenue of the Philippine Islands had been taxing sugar centrals operating in the same manner as the La Carlota Sugar Central under section 1462 of the Administrative Code of 1917, and the local Supreme Court held that this could not be done.

On account of this decision by the local Supreme Court, and others touching on the interpretation of the word "contractor" as used in said Section 1462, the Philippine Legislature in March, 1923, passed Act No. 3082, amending said section in such a way as to broaden its scope by expressly including therein among others, the owners and operators of sugar centrals.

Upon the enactment of Act No. 3082, the Collector of Internal Revenue of the Philippine Islands made and published the following ruling:

"TAX ON SUGAR CENTRALS—SECTION 1459, ADMINISTRATIVE CODE, ACT NO. 3065; SECTION 1462 AS AMENDED BY ACT NO. 3082.

"(a) In regard to the receipts derived by sugar centrals from sugar produced from sugar cane purchased from the growers the tax established in Section 1459 of the Administrative Code and Act No.

> 3065 and not that under Section 1462 of the Administrative Code as amended by Act No. 3082, should be paid, because in that respect the centrals would be partaking of the nature of manufacturers. It is well settled that an occupation or business does not become exempt from tax by being conducted with some other occupation or business for which a tax has been paid. (Sec. 1453, Administrative Code.)" (XXI Off. Gaz. 2824.)

Under this ruling, it is admitted that the business of a sugar central partakes the nature of that of a manufacturer as provided in Section 1459 of the Administrative Code of 1917, *only* when such sugar central *purchases* the sugar cane which it converts into sugar.

On November 17, 1924, the Supreme Court of the Philippine Islands decided the case of Central Azucarera de Bais vs. Wenceslao Trinidad. (46 Phil. 492.) The facts in that case were essentially the same as those in the La Carlota Central case, the only difference being that while in the last mentioned case the Collector of Internal Revenue claimed authority for collecting the tax under section 1462 of the Administrative Code, in the Central de Bais case he claims such authority under section 1459 of the same Code, holding that the sugar central is a manufacturer, and therefore, a merchant within the purview of said provision.

In considering the nature of the tax provided in Section 1459 of the Administrative Code, the majority opinion said:

> "The tax we are considering is a tax on certain transactions which are made taxable when carried out by merchants as distinguished from persons who do not devote themselves to commercial operations."

The decision then concluded that the sugar central is liable for the tax because being "a manufacturer" of sugar, it "in effect, *buys* its raw material and devotes itself *exclusively* to converting it into finished merchandise," and "it can make no difference" whether in buying such raw material, it "pays for it in merchandise or with money." The decision further stated that "it may, perhaps, not always be easy to draw the line of demarcation between one business and the other, but difficulties of that sort are frequently encountered in the interpretation of the law."

It is interesting to note that the same four justices who concurred in the majority opinion in the instant case, concurred in the majority opinion in the Central de Bais case. Three justices dissented, and Mr. Justice Johns, one of the dissenting justices in the instant case did not take part. There was a vacancy then in the Supreme Court, so that the vote of only four justices was necessary for a decision.

Both the majority and dissenting opinions agree as to the nature of the tax; but while the majority concludes from the facts that the sugar central, in effect, bought the raw materials, the dissenting justices hold that the relation of the sugar central to the plaintiff is that of a cooperator, or "as has been said in La Carlota Sugar Central vs. Trinidad (43 Phil. Rep., 816), is a partner or coparticipant of the sugar cane growers, for, while the latter supply the cane, the central furnishes the means for producing the sugar." Speaking of manufacturers under the purview of Section 1459 of the Administrative Code, the dissenting opinion says:

> "• • • manufacturers under said section, are those who have fixed places of business of the same nature as, and in competition with, merchants engaged in the sale, barter, or exchange of commodities manufactured by them from raw materials that they purchase, with the object of selling them and, from this commerce and interchange, obtain profits."

The authorities we have just reviewed establish the following propositions:

1. That a sugar central is not a contractor in the sense that this word is used in Section 1462 of the Administrative Code.
2. That the tax provided in Section 1459 of the Administrative Code is by nature a tax on

certain transactions "when carried out by merchants as distinguished from persons who do not devote themselves to commercial operations."

3. That a sugar central is a merchant under Section 1459 of said Code, only when it "*buys* its raw material and devotes itself *exclusively* to converting it into finished merchandise."

To these propositions, a fourth one may be added, which is in itself apparent from the wording of the statute, and that is, that a manufacturer in order to be considered a merchant must sell articles of its own production; in other words, it must manufacture to sell.

> "The incidents of manufacture, as such, apart from those which attach to business generally, consist of the acquisition of material and the disposal of the product. The sale of the manufactured product is properly incident to manufacture. The power to sell is an indispensable adjunct to a manufacturing business * * *." (38 Corpus Juris, Sec. 62, p. 989).
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> "Still again, is it sufficient for the person in question to be a maker of things with the making of which machinery had a part, more or less, to do, and that on a considerable scale? Is it not essential that he be a seller of the things which he makes? Is not the word used in contrast to the word 'merchant', 'trader', or 'dealer'? The latter sells what

he buys. Does not the manufacturer sell what he makes at least from what he buys? Ordinarily, at least, he must be a seller; for in the very nature of things he cannot keep making things. It is essential for him to sell the things which he makes to keep going." (In Re I. Rheinstron and Sons Co., 207 Fed. 119, 136.)

THE CASE AT BAR

Plaintiff does not buy its raw material and devote itself exclusively to its conversion into the finished product.

The present case may easily be distinguished from the La Carlota Central and the Central de Bais cases. The facts in the present case absolutely preclude all possibility of holding that the sugar central "in effect, buys its raw material and devotes itself exclusively to converting it into finished merchandise."

Paragraph IV of the stipulation of facts (Record, p. 25) expressly states that petitioner "received as its *share in the milling of sugar cane belonging to sugar cane growers*," raw centrifugal sugar, which is the same sugar taxed by the respondent. Paragraph III of the stipulation of facts (Record, p. 25) likewise expressly states that the raw centrifugal sugar so received by petitioner from the sugar cane growers constitutes its "*compensation for its services in milling said sugar cane.*"

The facts as agreed upon by the parties thus clearly establish the legal relation existing between the petitioner and the growers of the sugar cane. Such relationship cannot in anyway be legally held to be that of purchaser and seller. Strictly speaking, it is rather that of bailor and bailee.

> "Where articles are delivered by one person to another who is to perform labor upon them or to manufacture them into other articles for the former, the transaction is a bailment notwithstanding the articles are to be returned in altered form. But if the person by whom the articles are received may deliver in return articles which are not the product of those received the transaction is in effect a sale. So, where wheat is delivered to a miller to be ground and returned in the form of flour, the transaction constitutes a bailment, even, according to some authorities, though the flour returned is not to be ground from the identical wheat delivered; but where wheat is delivered to a miller to be paid for in flour, there is a sale. Likewise, where yarn is delivered to be paid in cloth woven therefrom, it is a sale. *But it has been held that a transaction is not converted into a sale by reason of the fact that the manufacturer is to receive a share in the manufactured article by way of compensation, or is to receive a share in the net profits*, or that his compensation is to be fixed by the selling price of the manufactured goods less commissions and the cost of the raw materials, or by the amount the manufactured goods should be sold for over a fixed price." (6 Corpus Juris, Sec. 9, pp. 1096-1097.)
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> "The delivery of logs to a sawmill to be sawed into boards within a specified time, the owner and miller

each to have one half of the boards, constitutes a bailment merely, and the bailor retains his general property in the logs until all are manufactured according to the contract." (Pierce v. Schenck, 3 Hill (N.Y.), 28 cited in Note 89, 6 Corpus Juris, p. 1096.)

"• • • In principle, the transaction between the parties to the present action is not different from that involved where the owner of leather delivers it to a manufacturer to be made into shoes (Mansfield v. Converse, 8 Allen, 182); or where the owner of logs delivers them to a miller to be sawed into lumber (Gleason v. Beers, 59 Vt. 581, 59 Am. Rep. 757, 10 Atl. 86, 1 Am. Neg. Cas. 937); or where the owner of milk delivers it to a factory to be made into butter or cheese (First Nat. Bank v. Schween, 127 Ill. 573, 11 Am. St. Rep. 174, 20 N. E. 681); or where the owner of live animals delivers them to another to be kept for compensation (Edgar v. Parsell, 184 Mich. 522, 151 N. W. 714, Ann. Cas. 1917A, 1160; Robinson v. Haas, 40 Cal. 474; Simmons v. Shaft, 91 Kan. 553, 138 Pac. 614). In any of these cases the transaction is a bailment, and it is altogether *immaterial whether the compensation of the bailee is fixed at a definite sum in money, or is a share of the product itself*, a share of the net proceeds of the adventure, a share of the increase, or is computed upon the product of the undertaking. 6 C. J. 1096." (Ferry & Co. v. Forquer, 61 Mont. 336, 29 A. L. R. 642, 646.)

Petitioner did not manufacture to sell, hence, it is not a merchant within the purview of Section 1459 of the Administrative Code.

The statute only considers a manufacturer as a merchant when it sells articles of its own production. In order to be considered a merchant within the terms of the statute, therefore, it must manufacture to sell.

In the instant case, petitioner only gets paid for its services in milling the sugar cane. It does not manufacture for its own account in order to sell the manufactured product. The finished product, as well as the raw material, never did belong to the petitioner, until it has received the sugar in compensation for its services. The planters were the owners of the raw material and the sugar, before, during and after the process of manufacture. Petitioner's title to the sugar did not vest by the mere fact of milling the cane. It required another act on the part of the planters—and that is, the delivery of the sugar in payment of its services. While it was petitioner's labor and machinery that made possible the *physical* conversion of the sugar cane into sugar, yet the sugar cannot be considered legally as the production of petitioner, because it never did belong to petitioner by reason of its manufacture. The entire product of the cane was legally the production of the planters.

It is true that petitioner eventually sold the raw centrifugal sugar which it received from the owners

of the sugar cane; but this sale was only a necessary step to convert petitioner's compensation into money values. Such compensation might have been paid in cash, or a certain proportion of the sales proceeds of the manufactured product; then, no tax can possibly accrue against petitioner under section 1459 of the Administrative Code. Petitioner's position is not altered just because it received compensation in specie.

It is respectfully submitted that petitioner is not a merchant under the purview of section 1459 of the Administrative Code of 1917:

1. Because, although, physically it converted the sugar cane into the raw centrifugal sugar, such sugar was not legally of its own production but was that of the owners of the sugar cane.

2. Because, in converting the said sugar cane into raw centrifugal sugar, it did not manufacture to sell,—it did render services for compensation; and

3. Because it did not *buy* the sugar cane from the sugar cane growers and devote itself exclusively to converting the same into finished merchandise.

EFFECT OF ACT NO. 3082 OF THE PHILIPPINE LEGISLATURE

Act No. 3082, passed in March, 1923, amends Section 1462 of the Administrative Code of 1917 in such a way that operators of sugar centrals are made expressly subject to the payment of the percentage tax therein provided. (See supra, p. 6). There is nothing in Section 1462, as so amended, which would exempt the business therein taxed from the payment of the taxes provided in Section 1459; nor is there a provision in the last named section which would exempt a business paying a tax thereunder from the payment of the tax provided in Section 1462, as amended. On the other hand, Section 1453 of the Administrative Code of 1917 provides, in part:

> "• • • The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and *one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid.*"

It is, therefore, clear that should it be decided that the transactions involved in these proceedings are taxable under Section 1459, then such transactions would eventually be subject to the payment of two taxes,—those under Section 1459 and Section 1462, as amended. We submit that this could not have

been the intention of the Philippine Legislature. Double taxation is always contrary to good government and should not be presumed as being intended in any legislation unless such intention is clearly expressed.

We submit, therefore, that by the passage of Act 3082, it was clearly demonstrated that the Philippine Legislature never intended to class sugar centrals milling sugar cane of others for compensation as merchants under Section 1459 of the Administrative Code, and for this reason the taxes sought to be recovered in this case should be declared as having been illegally collected and a refund thereof ordered forthwith.

III

Petitioner is included within the exemptions provided in Section 1460 of the Administrative Code of 1917.

For convenience, we again quote the pertinent provisions of section 1460 of the Administrative Code of 1917:

> "SEC. 1460. *Sales not subject to merchants' tax.*— In computing the tax above imposed transactions in the following commodities shall be excluded:
>
> "(a) Things subject to a specific tax.
>
> "(b) *Agricultural products when sold by the producer or owner of the land where grown, or by any*

other person other than a merchant or commission merchant, whether in their original state, or not." (Italics ours.)

While raw centrifugal sugar has undoubtedly undergone some process of manufacture, yet it must be admitted that in the present case, such raw centrifugal sugar is the *first* marketable form of the sugar cane, an essentially agricultural product. If the purpose of the exemption is to protect agriculture, it must also protect the industry which converts the unmarketable agricultural product into its marketable form. Thus, the exemption expressly includes agricultural products, not in their original state. Raw centrifugal sugar as the direct result of the milling of sugar cane, an agricultural product, must therefore come within the terms of the exempting provision as it is nothing more than sugar cane, or its juice, not in its original state.

The only question therefore to be determined is whether or not, petitioner can be classed among those persons exempted by the statute, to wit:

(a) The producer.

(b) The owner of the land where the agricultural product is grown.

(c) Any other person, other than a merchant or commission merchant.

If it be held that petitioner as the manufacturer of the raw centrifugal sugar is a merchant under section 1459 of the Administrative Code, then it must follow that it is selling articles of its own production, in other words, the petitioner must be the producer of the raw centrifugal sugar. As such producer of the agricultural product, not in its original state, it would come within the exemption provided in the statute.

If it cannot be considered a "producer,' as this term is used in the exempting provision, it can still be classed among the persons, "not a merchant or commission merchant," which are exempted by the statute. The reason for this is clear.

Section 1459 of the Administrative Code, in defining what persons may be considered as merchants who are taxable under said section, provides:

> "Merchant," as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. *Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants* having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

The general comprehensive term "merchant" as used in the statute is thus grouped into three classes:

(1) The merchant, properly speaking, who is engaged in the sale, barter, or exchange of personal property of whatever character;

(2) "The manufacturers who sell articles of their own production"; and

(3) The "commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected."

Section 1460, in excluding a "merchant or a commission merchant" from the exemption, cannot be held to exclude the general comprehensive term "merchant" as defined in section 1459, for in that case the phrase "commission merchant" would be a superfluity, as this class is already included in the generic term "merchant" as defined in said section. Undoubtedly the words "merchant or commission merchant" are used in this exempting provision in their specific sense as distinguished from the third class, the "manufacturer", also included in the definition of the generic term "merchant". Under the general accepted rule of statutory construction that the interpretation of a statute should, whenever possible, give effect to all its parts, this is the only legal construction that can be placed on this exempting clause.

THE RATIONALE OF SECTION 1460

The original exempting clause corresponding to section 1460 of the Administrative Code of 1917 is found in Section 142 of Act No. 1189 of the Philippine Commission which, in part, reads:

> "SEC. 142. The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirty-nine:
>
> "(a) Agriculturists, on all products of their own production sold by them.
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> • • • • • •
>
> "(g) Persons whose manufactures consist solely in harvesting and getting into proper condition for their own use or for sale the products of the lands owned or occupied by them, such as the cutting and drying of copra and threshing of rice."

In 1914, Act No. 2339 was passed, revising and consolidating former internal revenue laws. The corresponding provision in this Act is section 41, which reads:

> "*Sales not subject to merchants' tax.*—In computing the tax above imposed transactions in the following commodities shall be excluded:
>
> "(a) Merchandise actually exported by the vendor;
>
> "(b) Things, other than opium, subject to a specific tax;
>
> "(c) Agricultural products when sold by the producer or owner of the land where grown, whether in their original state or not."

This section was later amended by Section 3 of Act No. 2541 which was passed on December 21, 1915, for the purpose, as its title states, of "changing the rates of taxes and additional taxes, creating new taxes, *abolishing others*, and for other purposes." Said section as amended by Act 2541, is incorporated *verbatim* in section 1460 of the Administrative Code. It reads:

> "SEC. 41. *Sales not subject to merchant's tax.*—In computing the tax above imposed, transactions in the following commodities shall be excluded:
>
> "(a) Things subject to a specific tax;
>
> "(b) Agricultural products when sold by the producer or owner of the land where grown, or *by any other person other than a merchant or commission merchant*, whether in their original state, or not."

The italicized portions are the changes in the original section 41 of Act No. 2339.

Act No. 2541, which exempts "any other person, other than a merchant or commission merchant," dealing in agricultural products, whether in their original state or not, from the payment of the merchants' tax was passed in December of 1915. Only ten months before, to be exact, on February 5, 1915, the Philippine Legislature passed Act No. 2479 creating the Sugar Central Board. Section 2 of the Act reads:

> "SEC. 2. It shall be the duty of this board to promote and aid in the establishment of sugar centrals with their machinery, equipment, rights of way, railroads, and other appurtenances for the manufacture of sugar and industries derived therefrom in the sugar-producing provinces, if in its judgment the local conditions warrant the establishment of a sugar central."

Under this Act, the Government authorizes the investment of Two Million Pesos (₱2,000,000.00) of the gold standard fund in bonds of such sugar centrals. The Legislature made it clear that it was the object of the Act to *promote* and *assist* the establishment of sugar centrals in the Philippine Islands.

We submit that when Act 2541 was passed, barely ten months after the creation of the sugar central board, the Legislature must have had in mind Act 2479, the purposes of which would be nullified if the sugar centrals were taxed in the same way as merchants. Hence, the care in not using solely the word "merchant" as an exception to the exemption, but in specifying specially the exceptions as "merchant" and "commission merchant". If the intent was to except all the three classes from the exemption,—"merchants," "manufacturers" and "commission merchants"—it would have been easier to use only the term "merchant" in the exception.

If is therefore clear from the wording of the amendment in Act 2541, and from contemporaneous

enactments, that it was the policy of the government then to promote and assist the manufacture of sugar by sugar centrals, and that amendment should be interpreted so as to give effect to that policy.

ADMINISTRATIVE INTERPRETATIONS

Counsel for the respondent will undoubtedly lay much stress to circulars issued by Mr. Jno. S. Hord, relative to the enforcement of Act 1189, of which that gentleman was the author. We submit that as Act 1189 has been amended so many times that its effects are now very different from the provisions found in the Administrative Code of 1917 such interpretation of the old law cannot have effect against the plain intent and spirit of the statute as amended.

Section 141 of Act 1189, requires "each merchant and manufacturer" to pay a tax on the "gross value in money of all goods, wares, and merchandise sold, bartered, or exchanged," and then defines "manufacturer" in its natural, ordinary, or common meaning. Section 142 enumerates the exemptions from the tax, and such exemptions as hereinbefore shown are very limited in their application.

The present law limits the application of the term "merchant" in so far as manufacturers are conconcerned, to "manufacturers who sell articles of their own production." The various amendments to the exempting provision show a decided tendency to broaden the scope of such exemptions. Contemporaneous legislation would show that the last

amendment was intended to make more effective the announced policy of the government to promote and assist the establishment of sugar centrals,—otherwise necessarily included as manufacturers under the taxing statute.

The administrative interpretations of the original and obsolete statutes should therefore find no application to the case at bar.

CONCLUSION

Considered in the light of the arguments adduced above, it is respectfully submitted that the Supreme Court of the Philippine Islands erred in holding that petitioner herein is taxable under the provisions of section 1459 of the Administrative Code of 1917 for the transactions involved in the present case. The fundamental reasons for such a decision, furthermore, did not receive the approval of the required number of justices of the Supreme Court as provided by law.

Wherefore, it is respectfully prayed that the petition for a writ of certiorari be granted.

Respectfully submitted,

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 325.

PAMPANGA SUGAR MILLS, *Petitioner*,

vs.

WENCESLAO TRINIDAD, as Collector, *Respondent*.

BRIEF FOR PETITIONER.

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